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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

GLEND A R. TINAY,

Plaintiff,

v.

RICARDO P. BAUTISTA,

Defendant.

Civil Action No. 05-0003

**PLAINTIFF'S *EX PARTE*
MOTION TO RE-OPEN
FILE AND SET CASE FOR
HEARING ON
DAMAGES / AND TO
CORRECT CLERICAL ERROR
UNDER RULE 60(a)**

Date: July 11, 2007

Time: 8:30 a.m.

Judge: Hon. Alex R. Munson

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned moves and will bring *ex parte* the accompanying motions for hearing on damages and to correct clerical error under Fed. R. Civ. P Rule 60(a) before the District Court for the Northern Mariana Islands, Horiguchi Building, Beach Road, Garapan, Island of Saipan, Commonwealth of the Northern Mariana Islands on July 11, 2007 at 8:30 a.m.

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1 **MOTION FOR HEARING ON DAMAGES**

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3 **NOW COMES**, Plaintiff Glenda R. Tinay, by and through her counsel,
4 Joe Hill, *ex parte*, and hereby moves this Honorable Court to re-open the file to
5 allow plaintiff to present testimony and evidence supporting and showing her
6 damages incurred herein, including attorney's fees and costs.

7 This motion(s) is based on the pleadings and entire record herein.

8 1. On November 18, 2005, the Court by its Order Striking Answer of
9 Defendant and Entering Default Against Him entered default against defendant,
10 and the scheduled November 28, 2005 trial was taken off-calendar.

11 2. On October 6, 2006, the file in this case was ordered closed, except
12 that it may be re-opened if and when post-default activity is taken by plaintiff.
13 *See* Order Closing File.
14

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16 **MOTION TO CORRECT CLERICAL ERROR**

17 Plaintiff Glenda R. Tinay hereby moves this Honorable Court *ex parte* to
18 correct a clerical error pursuant to Fed. R.Civ. P. Rule 60(a). This motion is
19 supported by the Memorandum of Points and Authorities set forth below,
20 together with the other files and papers of record herein.

21 1. Under Rule 60(a), clerical mistakes in judgments, orders or other parts
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1 of the record and errors therein arising from oversight or omission may be
2 corrected by the court at any time of its own initiative or on the motion of any
3 party and after such notice, if any, as the court orders. Clerical mistakes are minor,
4 ministerial errors arising from simple oversight or omission, rather than
5 substantial factual or legal errors. *See In re West Texas Mktg. Corp.*, 12 F. 3d 497,
6 504-05 (5th Cir. 1994).
7

8 2. In the November 18, 2005 Order Striking Answer of Defendant and
9 Entering Default Against Him, defendant's answer of May 5, 2005 was stricken
10 and default entered against him. The said Order provided that, "[u]pon proper
11 motion of defendant, the court will set a hearing on damages without further
12 notice to defendant." (emphasis added).
13

14 3. The underlined word "defendant" in the said Order obviously should
15 read "plaintiff" and is clearly a clerical mistake or error, especially in light of the
16 fact that default had been entered against the defendant in the said Order.
17

18 **PRAYER**

19 Plaintiff prays that:

20 1. Based on the foregoing, the file/case herein be reopened and a hearing
21 set and held on damages to be presented by plaintiff.

22 2. Pursuant to Rule 60(a), it is respectfully requested that the word
23

1 “defendant” on page 2, line 18 of the court’s Order Striking Answer of Defendant
2 and Entering Default Against Him dated November 18, 2005 be determined to
3 have been a typographical or clerical error, stricken, and corrected to read
4 “plaintiff” to reflect the court’s actual intention and the necessary implication of
5 its Order and that a new corrected Order be issued nunc pro tunc.
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7 3. Upon and after said hearing on damages, the Court issue a final
8 judgment and award damages.

9 **SIGNED** this 22nd day of June, 2007.

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11 /s/
12 **JOE HILL**
13 Attorney for Plaintiff
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